IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

MONDAY, THE 20TH NOVEMBER 2006 / 29TH KARTHIKA 1928

Crl.Rev.Pet.No. 4019 of 2006()

CRA.528/2005 of ADDL.DISTRICT AND SESSIONS JUDGE, FAST TRACK (ADHOC-II), KOZHIKODE DIVISION

ST.1530/2004 of JUDL. MAGISTRATE OF FIRST CLASS-III, KOZHIKODE

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REVN. PETITIONER: APPELLANT/ACCUSED:

K. ABDUL KHADER, AGED 50 YEARS,
S/O.ATHRUMAN, KOYAMBATTA HOUSE,
P.O.CHEROOPA, KOZHIKODE.

BY ADV. SMT.T.KAMALA MENON

RESPONDENTS: COMPLAINANT & STATE:

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1. N.P. SHANMUGHAM,
S/O.LATE N.P.SAMIKUTTY, HOUSE NO.10,
FIELD VIEW COLONY, P.O. CHEVAYUR, CALICUT.

2. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR, SRI.C.K.SURESH

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 20/11/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.T.SANKARAN, J.

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CRL.R.P. No. 4019 of 2006

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Dated this the 20th day of November, 2006

O R D E R

The petitioner, accused in S.T.No.1530/2004 on the file of the Judicial Magistrate of the First Class-III, Kozhikode, was convicted under Section 138 of the Negotiable Instruments Act and was sentenced to undergo simple imprisonment for a period of six months and also to pay an amount of Rs.2,00,000/- as compensation under Section 357(3) Cr.P.C. In default of payment of compensation, there was a direction that the accused shall undergo simple imprisonment for three months. On appeal by the accused, the appellate court allowed the appeal in part and modified the sentence as imprisonment till the rising of the court. The direction to pay the compensation was confirmed.

2. The complainant contended that he and the accused were close friends and the accused borrowed an amount of Rs.2,00,000/- from him. On 15/01/2004, the complainant demanded the amount from the accused and the latter issued Exhibit P1 cheque dated 25/01/2004 in favour of the complainant. However, the cheque was dishonoured on its presentation, stating that the

funds are insufficient. Though Exhibit P4 notice was issued to the accused, it was returned as unclaimed.

3. Before the trial court, the complainant was examined as PW.1 and Exhibits P1 to P5 were marked. The case put forward by the accused during cross-examination is that he borrowed only a sum of Rs.25,000/- from the complainant and at the time of borrowing the amount, a cheque was issued as security for the transaction. It was contended that the complaint was filed misusing the cheque. The signature in Exhibit P1 cheque is not disputed. The trial court, according to me, rightly held that in the facts and circumstances of the case, the burden is on the accused to rebut the presumption under Section 139 of the Act. But no evidence was adduced by the accused to rebut this presumption. Though PW.1 was cross-examined, nothing was brought out in his cross-examination to show that the case put forward by the accused is probable. The trial court believed the evidence of PW.1 and held that the accused failed to rebut the presumption under Section 139 of the Act. On those grounds it was held that the accused is guilty for the offence punishable under Section 138 of the Act. The appellate court also considered the evidence in the case in detail

and concurred with the view taken by the trial court. The appellate court took a lenient view in the matter of sentence and reduced the sentence to imprisonment till the rising of the court. The direction to pay the compensation made by the trial court, which was confirmed by the appellate court, can in no way be said to be incorrect, illegal or unsustainable. No grounds are made out for interference in revision.

4. The revision petition lacks merit. However, in the facts and circumstances of the case, I am inclined to grant three months' time to the petitioner to pay the compensation amount.

5. Accordingly, the Criminal Revision Petition is dismissed and the conviction and sentence are confirmed. However, the petitioner is granted three months' time to pay the compensation amount of Rs.2,00,000/- and the execution of that part of the judgment shall stand suspended for a period of three months.

(K.T.SANKARAN)
Judge

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